IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.22628 of 2005
UDAY SINGH
Versus
THE STATE OF BIHAR & ANR
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4 14-07-2008 Heard learned counsel for the petitioner and learned counsel for the State.

This application has been filed for quashing the order dated 6.6.2002 passed by the Chief Judicial Magistrate, Rohtas at Sasaram in official case no. 46/02 whereby and where under he has taken cognizance against the petitioner for the offences punishable under rules 40 and 41 of Bihar Minor Minerals Concession Rules, 1972 (in short as Rules) read with section 379 of the Penal Code.

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Shortly stated the prosecution case is that on 6.6.02 the complainant, Triveni Das, Assistant Mining Officer, Rohtas at Sasaram filed prosecution report before Chief Judicial Magistrate, Rohtas (Sasaram) against the petitioner with the allegation that Sachidanand Singh, Mining Inspector, on 24.5.2002, 26.5.2002 and 28.5.2002 inspected the premises of the petitioner and found that he was illegally keeping stock of stone materials in violation of Rule 49 of Rules and stock of 8000 cubic feet was found at the site of the petitioner. On receipt of the said report learned Chief Judicial Magistrate by order dated 6.6.2002 took cognizance and issued summon against the accused persons.

Learned counsel submitted that on the basis of allegations no case u/s 379 of the Penal Code is made out against the petitioner. He further submitted that there is no allegation that the petitioner was

indulged in selling stone materials. Learned counsel pointed out that mere allegation of storage does not constitute any offence. According to the learned counsel the petitioner is lessee and on the date of inspection the period of lease was continuing.

It appears from the prosecution report that the same has been filed against ten persons. The inspection report of the Mining Inspector does not indicate that the petitioner was found involved in sale and purchase of the stone chips. According to petitioner he is lease holder. Mere storage of stone does not constitute any offence. The prosecution report as well as inspection note are vague one.

In the facts and circumstances of the case continuance of the present prosecution against the petitioner would be an abuse of the process of the court. This application is, accordingly, allowed and impugned order of cognizance dated 6.6.2002 as against the petitioner is hereby quashed.

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BKS **(M. Saran,J.)**